

REMARKS

In the Action, claims 1, 2 and 4-39 were pending, and upon entry of the present paper, claim 21 is amended, claims 22 and 24 are canceled without prejudice or disclaimer, and claims 40-41 are added. Claims 1, 2 and 4-39 stand rejected under 35 U.S.C. §103(a) as being unpatentable over an alleged combination of Shore (U.S. Patent Pub. No. 2003/0149662) and Johnson (U.S. Patent No. 6,535,726). Applicants traverse these grounds of rejection.

The Office Action's Reminders Regarding the Specification

Before addressing the rejections, the Office Action addresses the specification, noting that a two-part Background of the Invention may be used, with one labeled "Technical Field" and the other titled "Background Art." Applicants note that the specification has these paragraphs, with the "Technical Field" at paragraph [0003] and the "Background Art" at paragraphs [0004] to [0014].

The Office Action also suggests that the pictures in the specification cannot be properly reproduced. Applicants submit that the published version of this application, U.S. Patent Pub. No. 2003/0055735, reproduces these pictures with reasonable clarity. The Office Action does not issue any formal objections to the specification, and in view of the above, Applicants have not amended the specification herein. Of course, Applicants will be happy to address any such objections should they be made in a subsequent Office Action.

The Applicability of Johnson

Applicants note that one of the applied references, Johnson, was filed on January 12, 2000. Although Applicants address this reference below, Applicants do not concede that it is prior art to the present application, and Applicants reserve the right to disqualify and/or antedate this reference should the present rejection be maintained.

Independent Claims 1, 6, 7, 12, 13, 29, 33, 34 and 38, and Dependent Claims 2, 4-5, 8-11, 14-15, 30-32, 35-37 and 39-41

In rejecting claim 1, the Office Action continues to primarily rely on Shore, and concedes that Shore “fails to explicitly disclose a program to take control of the wireless mobile device’s menuing, interaction and display functions, and taking control of the wireless mobile device when the wireless mobile device enters a range of the product device.” For convenience, claim 1 recites “transmitting from the vendor device via the wireless transmission channel port to a compatible wireless transmission channel port on the wireless mobile device a program to take control of the wireless mobile device’s menuing, interaction and display functions.” To address this deficiency in Shore, the Office Action combines Shore with Johnson.

Johnson relates to a cellular telephone-based transaction system. In the Johnson preferred embodiment, the customer positions the cellular telephone 140 proximate the point of sale 110, and the point of sale 110 transfers “select site information” to the phone. Johnson, col. 4, line 57. This “select site information” may include a site identifier and an outbound phone number, or just the outbound phone number if that number can also identify the retail site. Johnson, col. 4, lines 58-60. Johnson uses this “select site information” to identify the site of the proposed transaction (e.g., identifying the particular gas station pump), and the phone 140 forwards this information to the cellular network 160, which in turn forwards this information, together with information identifying the user, to a billing network 196 for authorizing the transaction. Col. 5, lines 5-27.

As noted above, this “select site information” is merely described in Johnson as identification information, such as a phone number. In alternate embodiments, Johnson suggests that this identification can identify the site controller 112, the gas station, or the particular fuel dispenser 220. Johnson, col. 7, lines 15-33. Nowhere does Johnson suggest that this

identification information is a program, as recited in claim 1. Johnson fails to teach or suggest that this site information, which can be just a phone number used to identify the point of sale, is a “program to take control of the wireless mobile device's menuing, interaction and display functions,” as recited in claim 1. The Johnson phone number is not the claimed program.

For at least these reasons, claim 1 distinguishes over the art of record, and is in condition for allowance. Claims 2-5 depend from claim 1, and are allowable for at least the same reasons as claim 1, and further in view of the various advantageous and novel features recited therein.

Additionally, independent claims 6, 7, 29, 33 and 34 also recite the transmission of “a program to take control of the wireless mobile device's menuing, interaction and display functions,” independent claims 12 and 38 recite “means for taking control of the wireless mobile device's menuing, interaction and display functions,” and independent claim 13 recites “the third code mechanism takes control of the wireless mobile device's menuing, interaction and display functions.” The art of record fails to teach or suggest such features, and these claims are similarly allowable. Claims 8-11, 14-15, 30-32, 35-37 and 39-41 each depend from one of these independent claims, and are allowable for at least the same reasons as their base claim, and further in view of the various advantageous and novel features recited therein. For example, dependent claim 39 recites “[t]he method of claim 1, wherein said program causes a display on said wireless mobile device to display a list of products available for purchase from said vendor device and prices of said products, said method further comprising the steps of: receiving, on said wireless mobile device, a user selection of one of said listed products providing said selected product to said user; and obtaining payment for said selected product using a micropayment system.” The Office Action concedes that Shore does not disclose the

recited program, and Johnson's alleged program (the "select site information") does not "display on said wireless mobile device to display a list of products available for purchase from said vendor device and prices of said products."

New claims 40 and 41 are also distinguishable. Claim 40 recites "[t]he method of claim 1, wherein said mobile device is a mobile phone, and further comprising the steps of: wirelessly receiving, at the vendor device, a request to purchase an item offered for sale by said vending device; and using a card reader on said mobile phone to provide payment for said item," while claim 41 further recites "[t]he method of claim 40, wherein said payment for said item is anonymous, whereby said vendor device is not provided with identification of a user of said mobile phone." None of the art of record teaches or suggests such recited methods.

Independent Claim 16 and 28 and Dependent Claims 17-21, 23 and 25-27

Amended independent claim 16 recites, among other features, "the microprocessor in the product device taking electronic control of the wireless mobile device when said wireless mobile device enters a range of said product device." None of the art of record, alone or in combination (assuming, *arguendo*, that they may be combined at all), teaches or suggests the novel apparatus recited in claim 16. The Office Action concedes that Shore fails to teach or suggest the transmission of the "program to take control of the wireless mobile device ..." recited in claim 1, and Applicants submit that Shore also fails to teach or suggest the claim 16 "microprocessor taking electronic control of the wireless mobile device when said wireless mobile device enters a range of said product device."

The Office Action's other applied reference, Johnson, similarly fails to teach or suggest such an apparatus. As discussed above, the Johnson point of sale transmits "select site information," such as a telephone number that identifies the point of sale, to the user's cellular

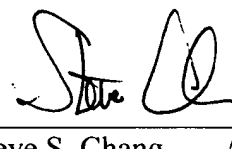
telephone. There is no teaching or suggestion in Johnson that the point of sale includes a "microprocessor taking electronic control of the wireless mobile device," as recited in claim 16.

For at least these reasons, Applicants submit that amended independent claim 16 distinguishes over the art of record (even assuming, *arguendo*, that the art is combinable). Claim 28 also recites "for taking electronic control of the wireless mobile device when said wireless mobile device enters a range of said product device," and distinguishes over the art of record as well. Claims 17-27 depend from claim 16, and are allowable for at least the same reasons as claim 16, and further in view of the various advantageous and novel features recited therein. For example, claim 27 recites "the micropayment system is a Qpass micropayment machine," and none of the art of record teaches or suggests such a micropayment system.

Conclusion

For at least the reasons set forth above, Applicants respectfully submit that pending claims 1-2 and 4-21, 23 and 25-41 distinguish over the art of record, and are in condition for allowance. Should the Examiner wish to have further discussion and/or amendment to place the application in condition for allowance, the Examiner is invited to telephone the Applicants' undersigned representative at the number appearing below.

Respectfully submitted,



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